IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.3557 OF 2004

Sunil Sadashiv Ghate ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr.A.P. Mundargi with Mr.Ganesh Gole for Applicant
Mr.B.H. Mehta, APP, for Respondent

CORAM: **SHRI A.M. KHANWILKAR, J.**

DATED: **SEPTEMBER 7, 2004**

P.C.:

. Heard Mr.Mundargi for the applicant and Mr.Mehta, learned Public Prosecutor. Perused the relevant materials which are produced before me which forms part of the chargesheet. On going through the record, it is amply clear that there is no allegation against the applicant that he directly demanded any amount from the complainant at any point of time. Reliance was, however, placed by the Public Prosecutor on the assertion made in the complaint that Sunil Ghate, the applicant herein, was involved in resolution of the dispute. Even on a plain reading of the complaint, there is nothing to suggest that the applicant had at any point of time directly demanded any amount from the complainant. Reliance was placed on the statements of Avinash D. Phatkar and Rony D. Fernandes. Even on a fair reading of those statements, prima facie, it is not

possible to accept that there is any allegation that the applicant had himself directly demanded any amount. On the contrary, the statement clearly mentions that the applicant impressed upon the persons who were present in the meeting with him to amicably resolve the dispute as all were Maharashtrians. In fact, one Rajendra Chavan had suggested in the said meeting that the complainant is a big builder of Badlapur and also a cable operator for which reason at least a sum of Rs.5 lacs should be taken from him. In response to the said suggestion, the statement of the witnesses record that the applicant reprimanded Rajendra Chavan that he should not get involved in this aspect and should do what was expected of him.

2. Be that as it may, on reading the complaint as a whole as well as the statements as aforesaid, there is nothing to suggest that the applicant had directly demanded any amount even during the meeting in which the complainant himself met the applicant. The complaint mainly proceeds on the allegation that the name of the applicant was always used by the accused for extortion. Even so, unless there is material on record to directly connect the involvement of the applicant, it is not possible to proceed on the assumption that the demands made by the accused were at the instance of the applicant. It is also not possible to accept the

prosecution case that the applicant has aided other accused in the commission of offence. There is no clear evidence in that behalf. Indeed, the Public Prosecutor relied on two pending cases against the applicant. However, it is seen that both the pending cases are relating to offences at the time of elections. One pertaining to painting on the wall and the other of canvassing after the specified period. Those offences cannot be the basis to assume involvement of the applicant in the commission of offence registered in the present case nor can it be the basis to deny bail. The learned Public Prosecutor also relied on the other criminal cases which were instituted against the applicant which, however, have ended in discharge or acquittal of the applicant. It is not open at this stage to assume that the applicant was engaged in the commission of the offence alleged in the present case. In the absence of clear material in that behalf, no such inference can be drawn. Hence, to my mind, the applicant deserves to released on bail, however, on the following conditions:

i) The applicant is released on bail in relation to the offence being C.R. No.I-38/ 2004 registered at Badlapur Police Station on execution of personal bond and two sureties in the amount of Rs.100,000/- (Rupees One lac only)

each during the pendency of the trial.

ii) The applicant shall not cause to influence the prosecution witnesses or attempt to tamper with the prosecution evidence in any manner whatsoever during the pendency of the trial.

iii) The applicant shall report to Byculla Police Station at Mumbai and also report to Badlapur Police Station as and when required by that Police Station or Thane Crime Branch which office is investigating into the alleged offence once in a fortnight on Saturday between 11 am and 4 pm.

iv) The applicant shall surrender his passport, if available. In case the applicant has not obtained a passport, he shall state that fact on affidavit to be filed in this Court before he is released on bail.

3. Application is disposed of with the above conditions.